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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 252

NICK SAGONIAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and concurring opinions in the Court of Appeals (Pet. App. 1a-6a) have not yet been reported. The District Court filed no opinion.

JURISDICTION

The judgment of the Court of Appeals was entered June 2, 1955. A petition for rehearing was denied June 28, 1955 (Pet. App. 7a). The petition for a writ of certiorari was filed July 21, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether a "pick up" man, who collects wagers from persons who receive them initially and transports them to the operator, is required to register and pay the occupational tax imposed by 26 U. S. C. 3290 on each person "who is engaged in receiving wagers for or on behalf of any person" engaged in the business of accepting wagers.

2. Whether it was necessary to prove that the wagers were placed after the effective date of the statute, where the "pick-up" man had them in his possession and was transporting them after such effective date.

STATUTES INVOLVED

The Internal Revenue Code of 1939 was amended October 20, 1951, 65 Stat. 529, by inserting a new Chapter, numbered 27A, providing for wagering taxes. The provisions of this new chapter took effect November 1, 1951. 65 Stat. 531.

Subchapter A of Chapter 27A includes Section 3285(d), which provides:

> Persons Liable for Tax.—Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax under this subchapter on all wagers placed with him. Each person who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter on all wagers placed in such pool or lottery. [26 U. S. C. (1952 ed.) 3285(d)].

Subchapter B of Chapter 27A includes Sections 3290 and 3291. Section 3290 provides:

> A special tax of $50 per year shall be paid by each person who is liable for tax under subchapter A or who is engaged in receiving wagers for or on behalf of any person so liable. [26 U. S. C. (1952 ed.) 3290].

Section 3291(a) provides in pertinent part:

> (a) Each person required to pay a special tax under this subchapter shall register with the collector of the district—
>
> (1) his name and place of residence;
>
> * * * * *
>
> (3) if he is engaged in receiving wagers for or on behalf of any person liable for tax under subchapter A, the name and place of residence of each such person. [26 U. S. C. (1952 ed.) 3291(a)].

STATEMENT

In August, 1952, an indictment was returned against petitioner in the United States District Court for the Southern District of Florida charging that petitioner, being engaged in carrying on the occupation of accepting wagers, failed to register and pay the special tax required by law (R. 1-2).

The evidence showed that on November 3, 1951, petitioner was arrested by state police and searched

while driving an automobile. Bags containing bills and tickets for a lottery known as bolita were found in his car. (R. 24-28, 33; see R. 114.) Petitioner told an officer of the Internal Revenue Service that, at the time of his arrest, he was on his way to turn in his bolita pick-up to one Tommy Marchese (R. 108), and that he had been employed for approximately a year by one Santos Trafficante, Jr. as a pick-up man at a salary of $40 per week (R. 108, 110-111). Petitioner had not registered or paid the special tax imposed by the federal statute (R. 101, 129).

Petitioner was found guilty and sentenced to imprisonment for one year (R. 154, 160-161). The Court of Appeals affirmed the conviction, holding that "the employee who collected the wagers and delivered them to the principal was as much a part of the business and as much involved in the acceptance of the wagers as the persons who physically received them from the patrons, and was therefore 'engaged in receiving wagers' in the sense contemplated by the statute." (Pet. App. 4a).

ARGUMENT

Contrary to petitioner's contentions (Pet. 10-21), the decision below is correct; it is in full accord with applicable decisions of this Court; and there has been no departure from the accepted or usual course of judicial proceedings. There is no conflict among the circuits, and there is no occasion for further review.

1. Petitioner contends (Pet. 10-20) that the court below unduly extends the statute in holding

that a "pick-up" man in a lottery was a person required to register and pay the special tax imposed by 26 U. S. C. 3290, *supra,* p. 3, on one "who is engaged in receiving wagers for or on behalf of any person" engaged in the business of accepting wagers. He argues that a "pick-up" man is not within the scope of the statute because he does not take the wagers from the bettors. This argument is directly rebutted by the wording of the statute which applies to one who "is engaged in receiving wagers for or on behalf of any person" in the wagering business; it does not refer to taking wagers from the bettors. Here petitioner, on behalf of his employer in the wagering business, went around and received the tickets and the money. He thus received wagers on behalf of his employer within the literal terms of the statute.

As the court below noted (Pet. App. 4a), the statute, from its inception, has been administratively so construed by the Treasury Department. The Treasury Regulation, issued under Chapter 27A of the Internal Revenue Code immediately after that chapter was first enacted, 26 CFR (1955 Supp.) 325.41, illustrates the requirements as to the need for registration, as follows:

> B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.

> B, his ten agents, *and the employee who collects the wagers* received on his behalf are each liable for the special tax.[1] [Emphasis supplied.]

As the court below also pointed out (Pet. App. 4a, after these regulations were promulgated, the statute was reenacted without change in the 1954 revision of the Internal Revenue Code (Sec. 4411), thus indicating Congressional approval of the interpretation. *Helvering* v. *Winmill,* 305 U. S. 79, 83; *Commissioner* v. *Flowers,* 326 U. S. 465, 469; *Helvering* v. *Griffiths,* 318 U. S. 371, 395.

2. Petitioner also argues (Pet. 20-21) that the evidence is insufficient to support his conviction in that there was only circumstantial proof that the wagers were placed after the effective date of the statute, Thursday, November 1, 1951. Petitioner was arrested on Saturday, November 3, admittedly when he was in the process of delivering the tickets and slips. If the pick-up and delivery were correctly held to be within the scope of the statute, as discussed above, then petitioner was properly convicted, since he concededly was engaging in that activity when he was arrested after the effective date of the statute. The time the wagers were

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[1] Another illustration in the same regulations is to the effect that a general bookkeeper or secretary in the office of the person in the wagering business would not be required to register. Such employees obviously do not receive the wagers on behalf of the employer in the same direct way that a pick-up man does.

actually placed was, as the court below held, wholly immaterial (Pet. App. 5a).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST, 1955.

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